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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/422,195	10/21/1999	DIMITRI KANEVSKY	12837(YO999-	5232

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EXAMINER

CHAMPAGNE, DONALD

ART UNIT	PAPER NUMBER
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3622

DATE MAILED: 04/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/422,195

Applicant(s)

KANEVSKY ET AL.

Examiner

Donald L. Champagne

Art Unit

3622

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 January 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4,6-19,21-32 and 34-41 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4,6-19,21-32 and 34-41 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 October 1999 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Prosecution Re-opened

1. New prior art has been found to nullify the examiner's amendment and proposed allowance agreed to by Steven Fischman, Esq., on 16 September 2003. Prosecution is hereby re-opened and a new non-final rejection follows. The claims of record are given in amendment C, filed on 17 January 2003 (Paper No. 10). Hence the following rejection is similar to that mailed by the Office on 9 April 2003 (Paper No. 11), except that the new prior art, Lobo et al. (US005781650A), replaces Kanevsky et al.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 6, 16-19, 21-32 and 34-41 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

At claim 16, line 9, "said common physical characteristic" (singular) lacks antecedent basis.

Similarly, at claim 16, line 12, "said common physical characteristic" (singular) lacks antecedent basis.

Similarly, at claim 29, line 11, "said common physical characteristic" (singular) lacks antecedent basis.

Similarly, at claim 29, lines 14 and 15, "said common physical characteristic" (singular) lacks antecedent basis.

Claims 6, 21 and 34 depend on cancelled claims.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

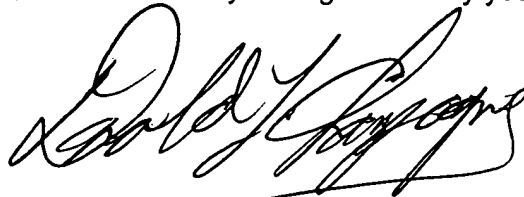
Art Unit: 3622

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-4, 6-19, 21-32 and 34-41 are rejected under 35 U.S.C. 103(a) as being obvious over Carney et al. in view of Lobo et al.
6. Carney et al. teaches (independent claims 1, 16 and 29) a system, method, and program storage device readable by a machine, for generating an advertisement optimized for two or more persons engaged in a common activity at a public location (col. 1 lines 42-61), the method including a) obtaining visual images of said two or more persons, and b) collecting physical characteristics data of said two or more persons based on the obtained visual images (col. 6 lines 64-66); c) and d), extracting common physical characteristics from the detected physical characteristics and associating/generating ads for products and services with said common physical characteristics col. 5 lines 61-65); and e), transmitting said optimized ad to said public location.
7. Carney et al. does not teach b), collecting said physical characteristics data, and e), transmitting said optimized ad, while said two or more persons are at the public location. Lobo et al. teaches automatic acquisition of physical characteristics data (col. 2 lines 38-56), which reads collecting said physical characteristics data while said two or more persons are at the public location. Because automatic/real-time collection of physical characteristics data enables real-time targeting, which would be expected to produce better results than the simple demographic targeting of Carney et al., it would have been obvious to one of ordinary skill in the art, at the time of the invention, to add the teachings of Lobo et al. to those of Carney et al.
8. Carney et al. also teaches claims 2, 17 and 30 (col. 5 lines 57-65); claims 3, 18 and 31 (col. 7 lines 14-17 24); claims 4, 7, 19, 22, 32 and 35 (col. 6 lines 14-30); claims 8-10, 23-25 and 36-38 (col. 10 lines 44-45); claims 11-12, 26-27 and 39-40 (col. 6 lines 30-45); and claims 13-15, 28 and 41 (col. 3 lines 5-8).
9. Lobo et al. teaches claims 6, 21 and 34 at the citations given above.

Conclusion

10. **COPY of REFERENCES** - Applicant is entitled to receive a copy of every reference cited by the examiner (except at allowance; MPEP 707.05(a)). Applicant should contact the examiner if a completed form PTO-892 is enclosed, but the cited references are not.
11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Donald L Champagne whose telephone number is 703-308-3331. The examiner can normally be reached from 6:30 AM to 5 PM ET, Monday to Thursday. The examiner can also be contacted by e-mail at donald.champagne@uspto.gov, and *informal* fax communications (i.e., communications not to be made of record) may be sent directly to the examiner at 703-746-5536.
12. The examiner's supervisor, Eric Stamber, can be reached on 703-305-8469. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-5771.
13. **ABANDONMENT** – If examiner cannot by telephone verify applicant's intent to continue prosecution, the application is subject to abandonment six months after mailing of the last Office action. The agent, attorney or applicant point of contact is responsible for assuring that the Office has their telephone number. Agents and attorneys may verify their registration information including telephone number at the Office's web site, www.uspto.gov. At the top of the home page, click on Site Index. Then click on Agent & Attorney Roster in the alphabetic list, and search for your registration by your name or number.



Donald L. Champagne
Examiner
Art Unit 3622

8 April 2004

